

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rolando Vasquez	Team: Squad #5	CCRB Case #: 201709780	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 11/16/2017 7:20 PM	Location of Incident: § 87(2)(b)	Precinct: 114	18 Mo. SOL 5/16/2019	EO SOL 5/16/2019	
Date/Time CV Reported Fri, 11/17/2017 8:35 PM	CV Reported At: Precinct	How CV Reported: In-person	Date/Time Received at CCRB Fri, 11/24/2017 3:50 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POF Erika Drake	21109	951694	114 PCT
2. POM Brian Lee	21213	951904	114 PCT
3. Officers			114 PCT
4. SGT Darnell Downes	00266	940101	OMAP
5. LT Joseph Muir	00000	937152	114 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM John Peppard	19035	952103	114 PCT
2. POF Cindy Paulino	26234	962665	114 PCT
3. POF Lauren Anthony	07282	957334	114 PCT
4. POM Thomas Abruscati	20209	962195	114 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Brian Lee	Force: Police Officer Brian Lee used physical force against § 87(2)(b)	§ 87(2)(b)
B.POF Erika Drake	Abuse: Police Officer Erika Drake interfered with § 87(2)(b)'s use of a recording device.	§ 87(2)(b)
C.POF Erika Drake	Abuse: Police Officer Erika Drake forcibly removed § 87(2)(b) to the hospital.	§ 87(2)(b)
D.LT Joseph Muir	Abuse: Lieutenant Joseph Muir forcibly removed § 87(2)(b) to the hospital.	§ 87(2)(b)
E.SGT Darnell Downes	Abuse: Sergeant Darnell Downes forcibly removed § 87(2)(b) to the hospital.	§ 87(2)(b)
F. Officers	Force: Officers used physical force against § 87(2)(b)	§ 87(2)(b)
G.POM Brian Lee	Force: Police Officer Brian Lee used physical force against § 87(2)(b)	§ 87(2)(b)
H.POM Brian Lee	Force: Police Officer Brian Lee used physical force against § 87(2)(b)	§ 87(2)(b)
I.POM Brian Lee	Force: Police Officer Brian Lee used a chokehold against § 87(2)(b)	§ 87(2)(b)

Officer(s)	Allegation	Investigator Recommendation
J.POM Brian Lee	Force: Police Officer Brian Lee restricted § 87(2)(b) s breathing.	

Case Summary

This complaint was filed by § 87(2)(b) on November 17, 2018 in person at an NYPD stationhouse. The complaint was received from IAB under IAB Log 2017-46241 on November 24, 2017.

On November 16, 2017, at approximately 7:20 p.m., § 87(2)(b) was at § 87(2)(b) in Queens § 87(2)(b). § 87(2)(b) and another resident § 87(2)(b) were reportedly involved in a dispute. PO Brian Lee, PO Erika Drake, PO John Peppard, PO Cindy Paulino, PO Lauren Anthony, and PO Thomas Abruscatti from the 114th Precinct responded to the location. § 87(2)(b) was pushed onto a couch by PO Lee (**Allegation A: Force**, § 87(2)(g)). PO Drake took § 87(2)(b) cell phone which he had been using to record the police interaction (**Allegation B: Abuse of Authority**, § 87(2)(g)). PO Drake handcuffed § 87(2)(b) intending to have him removed to the hospital (**Allegation C: Abuse of Authority**, § 87(2)(g)). Supervisors Lt. Joseph Muir and Sgt. Darnell Downes from the 114th Precinct arrived and made the decision to remove § 87(2)(b) to the hospital (**Allegations D-E: Abuse of Authority**, § 87(2)(g)). Officers allegedly pushed § 87(2)(b) back onto the couch (**Allegation F: Force**, § 87(2)(g)). PO Lee allegedly struck § 87(2)(b) in the chest with his knees (**Allegation G: Force**, § 87(2)(g)). PO Lee punched § 87(2)(b) (**Allegation H: Force**, § 87(2)(g)). PO Lee allegedly used a chokehold against § 87(2)(b) which restricted his breathing (**Allegations I-J: Force**, § 87(2)(g)).

No arrests or summonses resulted from this incident.

Video was obtained which captures this incident.

Findings and Recommendations

Allegation A – Force: Police Officer Brian Lee used physical force against § 87(2)(b)

§ 87(2)(b) testified that he was involved in a verbal dispute with another resident § 87(2)(b) (BR01). The police were called to the location and § 87(2)(b) explained to them his side of the situation while § 87(2)(b) was upstairs packing his belongings. § 87(2)(b) started to go upstairs but PO Lee told him to wait downstairs. § 87(2)(b) asked if he was being detained and PO Lee told him that he was not. § 87(2)(b) again tried to go upstairs. PO Lee grabbed § 87(2)(b) by the arm and pushed him onto a couch.

Video was obtained from § 87(2)(b) of this incident. § 87(2)(b) recorded footage from the surveillance system at § 87(2)(b), a portion of which is embedded below (BR02-04). The video shows § 87(2)(b) walking toward a doorway, stopping and turning toward PO Lee who gestures back toward the couches. § 87(2)(b) proceeds toward the doorway. PO Lee pulls § 87(2)(b) toward the couch and pushes him onto the couch.



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§ 87(2)(b) § 87(2)(b) witnessed the incident. § 87(2)(b) stated that there was an ongoing dispute between § 87(2)(b) and § 87(2)(b) (BR06). On the incident date, § 87(2)(b) spit in § 87(2)(b) room and was antagonizing § 87(2)(b) to physically hit him. There was no physical confrontation between them on the incident date. Officers arrived and § 87(2)(b) decided he was going to go upstairs to gather his belongings and leave the group home. § 87(2)(b) refused to wait downstairs despite being asked by officers to wait until § 87(2)(b) left.

PO Lee, PO Drake, PO Abruscatti, PO Paulino, PO Peppard, and PO Anthony all testified that § 87(2)(b) attempted to go upstairs despite verbal requests to wait for § 87(2)(b) to leave (BR06-11). After viewing the video, PO Lee acknowledged pushing § 87(2)(b) onto the couch after he tried to go upstairs.

Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances, NYPD Patrol Guide, Procedure 221-01 (BR12).

§ 87(2)(g), § 87(2)(b)

Allegation B – Abuse of Authority: Police Officer Erika Drake interfered with § 87(2)(b)'s use of a recording device.

Allegation C – Abuse of Authority: Police Officer Erika Drake forcibly removed § 87(2)(b) to the hospital.

Allegation D – Abuse of Authority: Lieutenant Joseph Muir forcibly removed § 87(2)(b) to the hospital.

Allegation E – Abuse of Authority: Sergeant Darnell Downes forcibly removed § 87(2)(b) to the hospital.

§ 87(2)(b) testified that he was recording the officers on his cell phone after they arrived. After he was pushed onto the couch by PO Lee, PO Drake took the phone from his hand and placed it on a table. § 87(2)(b) stood up and picked up his phone. PO Drake took the phone from his hands again. A physical struggle ensued in which § 87(2)(b) was handcuffed and ultimately removed to the hospital for psychiatric evaluation.

§ 87(2)(b) submitted video footage he recorded on his cell phone, embedded below (BR13). § 87(2)(b) is seated and is speaking back and forth with staff members from the group home about various issues. § 87(2)(b) disputes what the staffers are saying, accuses them of lying and uses profanity, but is not shouting. A staffer says that she believes § 87(2)(b) should be hospitalized because he is not coherent. As described in the previous section, § 87(2)(b) stands up, attempts to go upstairs, and is pushed onto the couch by PO Lee. § 87(2)(b)

complains about being touched. PO Drake tells § 87(2)(b) “Listen, he explained to you” and takes the phone away before the clip ends.



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As described above, § 87(2)(b) stated that § 87(2)(b) was antagonizing § 87(2)(b) to hit him and spit in § 87(2)(b) room. § 87(2)(b) believed this behavior was abnormal and that § 87(2)(b) might be having a breakdown and requested for him to be taken to the hospital. There was no physical altercation between § 87(2)(b) and § 87(2)(b).

PO Drake testified she was informed by § 87(2)(b) that over a period of a few days § 87(2)(b) had outbursts toward other residents which prompted the police to be called and he had previously been removed to the hospital for psychological evaluation. Staff wanted § 87(2)(b) to be hospitalized because they did not feel safe with him there. At some point, § 87(2)(b) told officers he was recording with his cell phone. After § 87(2)(b) attempted to go upstairs, PO Drake took the cell phone from § 87(2)(b) to place him in handcuffs. It was necessary to handcuff § 87(2)(b) for everyone’s safety because the situation was escalating and § 87(2)(b) needed to be removed to the hospital.

PO Drake, PO Lee, PO Abruscatti, PO Paulino, PO Anthony, and PO Peppard were generally consistent in describing § 87(2)(b) conduct during the incident with terms such as “irrational,” “irate,” “erratic,” and “aggressive.” When asked to elaborate on why they described § 87(2)(b) in this manner, the officers consistently referred to § 87(2)(b) refusal to comply with their commands to stay downstairs and his demeanor which was loud and combative. Collectively, the officers’ testimony reflected that either they did not remember or that § 87(2)(b) did not make any threatening statements and was not physically aggressive prior to the attempt to handcuff him. Prior to § 87(2)(b) being handcuffed, the officers were merely waiting for § 87(2)(b) to leave the location. There was no testimony regarding any plan to arrest or detain § 87(2)(b) before he was handcuffed.

Supervisors, Lt. Muir and Sgt. Downes, arrived after § 87(2)(b) was handcuffed. Lt. Muir testified that § 87(2)(b) was speaking “gibberish” and was talking in circles at a high volume when he encountered him, but he did not recall the general substance of what he was saying (BR14). Lt. Muir interviewed all the officers on scene who informed him that § 87(2)(b) was acting irrationally, did not comply with their orders, and made them feel threatened. Lt. Muir did not know what specific actions caused the officers to describe § 87(2)(b) as “irrational,” did not know what orders had not been complied with, and did not remember if officers said why they felt threatened. Staff at the group home refused to provide information to Lt. Muir about § 87(2)(b). Lt. Muir learned from someone, possibly § 87(2)(b) that he had previously been hospitalized for psychiatric evaluation.

Sgt. Downes testified that he was informed by PO Drake that she believed § 87(2)(b) was an emotionally disturbed person (EDP) because he was acting irrationally and fought with officers

(BR15). PO Drake did not tell him any other details about what happened. Sgt. Downes did not recall any specific information that suggested § 87(2)(b) was a danger to himself or others.

Members of the service will not interfere with a person's use of recording devices to record police interactions. Intentional interference such as blocking or obstructing cameras or ordering the person to cease constitutes censorship and violates the First Amendment, NYPD Finest Message #9881632 (BR16).

An EDP is someone who appears to be mentally ill or temporarily deranged and is conducting himself in a manner which a police officer reasonably believes is likely to result in serious injury to himself or others. An EDP may be taken into protective custody when he is conducting himself in a manner likely to result in serious injury to himself for others, NYPD Patrol Guide, Procedure 221-13 (BR17).

§ 87(2)(g)
[REDACTED]

[REDACTED]

Allegation F – Force: Officers used physical force against § 87(2)(b)

Allegation G – Force: Police Officer Brian Lee used physical force against § 87(2)(b)

Allegation H – Force: Police Officer Brian Lee used physical force against § 87(2)(b)

Allegation I – Force: Police Officer Brian Lee used a chokehold against § 87(2)(b)

Allegation J – Force: Police Officer Brian Lee restricted § 87(2)(b)'s breathing.

§ 87(2)(b) alleged that multiple officers, he did not know who, pushed him back onto the couch. PO Lee hit § 87(2)(b) twice in his chest with his knees. § 87(2)(b) pulled his arms in front of him and stood up to avoid being kneed by PO Lee. § 87(2)(b) did not attempt to strike or fight the officers. PO Lee punched § 87(2)(b) with a closed fist in the head above his eyebrow. § 87(2)(b) was pushed back onto the couch. PO Lee wrapped his arm around § 87(2)(b) neck, which restricted his breathing, and dragged him across the living room to a second couch on the other side of the living room. § 87(2)(b) was

handcuffed. § 87(2)(b) described himself as 5'10" tall and weighing 245 pounds when he appeared for his CCRB interview.

§ 87(2)(b) stated that officers began handcuffing § 87(2)(b) after he was placed on the couch. § 87(2)(b) pulled and tugged on these officers with his body weight. The only place the officers touched were § 87(2)(b) arms while handcuffing him. No officer kned, punched or choked § 87(2)(b).

§ 87(2)(b) filed his complaint in-person at the 111th Precinct stationhouse the day after the incident. Photos of injuries sustained by § 87(2)(b) were taken by the NYPD and forwarded to the CCRB when the complaint was received. One photo depicts bruising on § 87(2)(b) forehead above his left eyebrow (BR18). One photo depicts a round indentation on § 87(2)(b) chest (BR19). The bruising on § 87(2)(b) forehead is also depicted in a photo of § 87(2)(b) which was attached to TRI reports generated by the officers following this incident (BR20).

Medical records were obtained from § 87(2)(b). The medical records primarily reflect a psychiatric evaluation of § 87(2)(b). No complaints of pain or injury are noted. The only injuries noted are red marks and scratches on § 87(2)(b) arm which was attributed to another resident beating on him (BR21).

The recording of the surveillance footage shows multiple officers involved in a mass effort to get § 87(2)(b) handcuffed. A clip of this struggle is embedded below (BR22). The beginning of the struggle is obstructed due to the large number of people involved and because it occurs partially beyond the camera's frame. § 87(2)(b) suddenly stands. PO Lee pulls his right arm back and moves it quickly forward. This action by PO Lee is highlighted in the second brief clip embedded below (BR23). A large huddle of officers and § 87(2)(b) move from one side of the living room to a couch on the other side where § 87(2)(b) is ultimately handcuffed. Again, given the number of people involved, § 87(2)(b) is obstructed and it cannot be seen how he is being moved across the room.



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PO Drake, PO Lee, PO Abruscatti, PO Paulino, PO Anthony, and PO Peppard were generally consistent in describing that § 87(2)(b) physically resisted their effort to handcuff him by pushing himself onto the couch, pulling his arms away, and moving his body around. None of the officers described any attempt by § 87(2)(b) strike any officer. All the officers denied that § 87(2)(b) was kned, punched, or placed in a chokehold. The force used was limited to officers grabbing § 87(2)(b) arms to gain control and get him handcuffed. PO Drake, PO Abruscatti, PO Paulino, PO Anthony, and PO Peppard did not see PO Lee with his arm around § 87(2)(b) head.

PO Lee testified that he reached for § 87(2)(b) head as part of the effort to gain control of § 87(2)(b). PO Lee explained that he had the top of § 87(2)(b) head under his armpit to attempt to move § 87(2)(b) into a position where officers could get him handcuffed. PO

Lee denied that the motion seen in the video is him throwing a punch even though he acknowledged it appeared that way. PO Lee had § 87(2)(b) head under his armpit for most of time officers were trying to get him handcuffed.

Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances, NYPD Patrol Guide, Procedure 221-01 (BR12).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is § 87(2)(b) first CCRB complaint (BR24).
- PO Lee has been a member of the service for six years and has no prior substantiated allegations. PO Lee has only prior complaint which was mediated.
- PO Drake has been a member of the service for six years and has no prior substantiated allegations. § 87(2)(g)
- Lt. Muir has been a member of the service for has been a member of the service for 13 years, has no substantiated allegations, and § 87(2)(g)
- Sgt. Downes has been a member of the service for 12 years, has no substantiated allegations, and § 87(2)(g)

Mediation, Civil and Criminal Histories

- This complaint was unsuitable for mediation because § 87(2)(b) [REDACTED]
- The NYC Comptroller's Office responded to a request on April 2, 2018 indicating that no notice of claim was filed about this incident (BR25).
- § 87(2)(b), § 87(2)(c) [REDACTED]

Squad No.: 5

Investigator:	_____	_____	_____
	Signature	Print Title & Name	Date

Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date